FILED
AUG 17 1950
CHARLES ELMORE CROPLEY
CLERK

No. 210

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

HENRY F. BUTLER AND ESTELLE K. BUTLER, *Petitioners,*

v.

DISTRICT OF COLUMBIA, *Respondent.*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF IN OPPOSITION

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DIVISION OF PRINTING AND PUBLICATIONS—GOVERNMENT OF THE DISTRICT OF COLUMBIA

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OPINIONS BELOW

The opinion of the Board of Tax Appeals for the District of Columbia (R. 107) has been reproduced in State

and Local Tax Service, "D. C." and "Md." (Prentice-Hall, Inc.), ¶ 13,022, page 13,026, and the opinion of the court below [United States Court of Appeals for the District of Columbia Circuit] (R. 118) is reported in 181 F. 2d 790.

STATUTE INVOLVED

The statute involved is the District of Columbia Income Tax Act of 1939, 53 Stat. 1087, ch. 367. Section 2 (a) of that act provided, insofar as here pertinent, as follows:

> "Tax on individuals.—There is hereby levied for each taxable year upon the taxable income of every individual domiciled in the District of Columbia on the last day of the taxable year a tax at the following rates:"

However, except for certain purposes not here material, said Act of 1939, which imposed the income tax *inter alia*, upon individuals domiciled within the District of Columbia on the last day of the taxable year was repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, by the provisions of Article I, Title I, Sec. 1 of the District of Columbia Revenue Act of 1947, 61 Stat. 331, ch. 258. Under Article I, Title I, Sec. 4(s) of the 1947 Act, *supra*, as amended by Title IV, Sec. 401 of the District of Columbia Revenue Act of 1949, ... Stat. ..... , effective for taxable years beginning after December 31, 1949,[1] the word "resident" is defined as follows:

> "(s) The word 'resident' means every individual domiciled within the District on the last day of the taxable year, and every other individual who maintains a place of abode within the District for

[1] See 1 U. S. Code Congressional Service 1949, page 135.

more than seven months of the taxable year, whether domiciled in the District or not. The word 'resident' shall not include any elective officer of the Government of the United States or any employee on the staff of an elected officer in the legislative branch of the Government of the United States if such employee is a bona fide resident of the State of residence of such elected officer, or any officer of the executive branch of such Government whose appointment to the office held by him was by the President of the United States and subject to confirmation by the Senate of the United States and whose tenure of office is at the pleasure of the President of the United States, unless such officers are domiciled within the District on the last day of the taxable year."

The income tax levied by the Revenue Act of 1947, *supra*, upon individuals is upon every "resident". Among the amendments to the 1947 act contained in the 1949 act was an increase to $4000.00 of the exemption allowed each resident as a credit against net income.[2]

SUMMARY OF ARGUMENT

This case does not present any of the questions upon which this Court ordinarily grants a writ of certiorari. The question involved is one of fact, viz., petitioners' domicile on the last day of each of the calendar years 1942 to 1945, inclusive. That question is academic since the statute involved was repealed in 1947, and the liability of individuals for the District of Columbia income taxes now rests upon a new basis.

The matter involved is not, as petitioners contend, "of utmost importance to every individual residing in the Dis-

[2] Ib. page 138.

trict of Columbia who desires to retain his domicile and right to vote in the state where he maintains his permanent home." The matter can be of importance only to individuals such as these petitioners who at this late date may litigate the question of their liability under the now repealed District of Columbia Income Tax Act of 1939, *supra*.

ARGUMENT

The Petition Should Be Denied

This Court has stated that it will not ordinarily review decisions of the United States Court of Appeals for the District of Columbia which are based upon statutes limited in their operation to the District of Columbia. *District of Columbia* v. *Pace*, 320 U. S. 698, 702, 88 L. Ed. 408, 64 S. Ct. 406; *Del Vecchio* v. *Bowers*, 296 U. S. 280, 285, 80 L. Ed. 229, 56 S. Ct. 190. This statute involved in the case at bar, like the one involved in *District of Columbia* v. *Pace, supra*, is limited in its operation to the District of Columbia, but, unlike the one involved in the *Pace* case, the one here involved has been repealed. As a matter of fact, this court declared in the *Pace* case that it did not take the case "to determine where Mr. Pace was domiciled" (320 U. S. 700). Argument and contentions of the petitioners to the contrary notwithstanding, they are asking this court to take this case merely to determine where they were domiciled on the last day of each of calendar years 1942 to 1945, inclusive. The question of domicile is a question of fact, *District of Columbia* v. *Murphy, infra*. The Board of Tax Appeals found, as a fact that petitioners were domiciled within the District on the last day of each of the years involved. The Court of Appeals had power to set aside that determination

of the Board only if the Court was convinced, which in this case it was not, that the Board was clearly wrong. This Court is not called upon to separate factual from legal grounds of decisions and to determine whether affirmance of the Board of Tax Appeals by the Court of Appeals could stand on questions of law alone. *District of Columbia* v. *Pace, supra.*

Rule 38, par. 5(c) of the Revised Rules of this Court indicates the nature of the reasons for which a review on a writ of certiorari will be granted. Applying those reasons to the instant case, it seems clear that a writ should not issue in this case. There is no question of general importance involved. The statute involved has been repealed and the basis of individual liability for District income taxes has been changed. The question can be of no importance to any one save a few individuals like these petitioners who are now in litigation over the question of their liability under the now repealed District of Columbia Income Tax Act of 1939, *supra.* Furthermore, the general question of the liability of individuals for the tax imposed under that repealed act was most exhaustively resolved by this Court in *District of Columbia* v. *Murphy,* 314 U. S. 441, 86 L. Ed. 329, 62 S. Ct. 303.

Petitioners urge that this case is important because the question of domicile is important in determining ones right to vote, where death duties are payable, where the marital status is, and for many purposes other than the collection of District of Columbia income taxes. Inconsistency between the right to vote in one place and the assessment of inheritance taxes by another jurisidiction based upon the voter's domicile at the time of his demise is not novel. *Texas* v. *Florida,* 306 U. S. 398, 83 L. Ed. 817, 59 S. Ct. 563, 121 A. L. R. 1179. In this connection it will be recalled that this court has declared that "A vote cast without chal-

lenge and adjudication may indicate only laxity of the state officials, and even an adjudication of the right to vote cannot preclude the levy of a tax by an arm of the Federal Government." *District of Columbia* v. *Murphy, supra.*

From the foregoing it seems clear that this case involves no question of general importance. Continuing, therefore, with the reasons set forth in said Rule 38, par. 5(c) of the Revised Rules of this Court, it is equally clear that there is in this case no question of substance relating to the construction or application of the Constitution, or a treaty or statute, of the United States, which has not been, but should be, settled by this Court.

On page 6 of their petition, petitioners propound the following query: "Has the Court below given full faith and credit to the finding of domicile in the State of Maine by the Supreme Judicial Court of the State of Maine?". The "finding of domicile" to which petitioners apparently allude is the fact that petitioner Henry F. Butler was admitted to practice as an attorney and counselor in the Judicial Courts of the State of Maine, and the certificate in evidence thereof contains the phrase "Henry F. Butler of Woolwich, in the County of Sagadohoc." Said certificate also recites that said petitioner complied "with all the requirements of law regulating such admission" (R. 62A). There is nothing, however, in said certificate to indicate that said Henry F. Butler, much less petitioner Estelle K. Butler, was domiciled within the State of Maine on the 31st day of each December from 1942 to 1945, inclusive. Moreover, that such an ex parte proceeding which resulted in no judgment, money or otherwise, is not within the meaning of the phrase "Judicial Proceedings" as the same appears as part of the full faith and credit clause of Art. IV, Sec. 1 of the Federal Constitution is too elementary to require any citation of authorities.

CONCLUSION

It is submitted that the petition for writ of certiorari should be denied.

Respectfully submitted,

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